

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3701 of 1984

Date of decision: 11-3-1997

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJENDRA B JOSHI

Versus

STATE OF GUJARAT

Appearance:

MRD. C. Raval for Petitioners
Mr. D.V. Mehta for Respondent No. 4
None present for other respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 11-3-1997

CAV JUDGEMENT

The petitioners, who are working as Planning

Assistants in Ahmedabad Urban Development Authority (AUDA), have filed this special civil application challenging the action of the respondent authorities in assigning seniority to respondent No.4, above the petitioners, in the final seniority list dated 10th May, 1984, in which the services of respondent No.4 were treated as service in AUDA with effect from 9-10-1978.

2. The facts which are not in dispute are that the petitioners were appointed by direct recruitment as Planning Assistants in the office of AUDA. Respondent No.4 was appointed by selection as Planning Assistant in the Town Planning and Valuation Department of the Government of Gujarat. Petitioner No.2 joined the post on 1-2-1979, whereas petitioner No.1 joined the post on 3-4-1980. Respondent No.4 had joined the post on 6-11-1978. Respondent No.4 has rendered her resignation to the authorities of Town Planning and Valuation Department of the State Government, from the post of Planning Assistant, on 1-5-1980. Her resignation was accepted by the Department under order dated 5-6-1980. Under order dated 6th June, 1980, respondent No.4 was appointed as Planning Assistant in AUDA, with effect from 2-6-1980, and she was on probation for a period of two years.

3. In the provisional seniority list the petitioners were shown senior to respondent No.4. It is the case of the petitioners that they have been assigned seniority over respondent No.4 as they were appointed earlier to her in AUDA. The petitioners submitted objections against the provisional seniority list and their objection was confined to the grievance that respondent No.4 should be placed at serial No.6, instead of placing her at serial No.4. Respondent No.4 also submitted objection for considering her as an appointee of the year 1978 and to assign her seniority accordingly. Final seniority list was published by AUDA on 31st May, 1984, placing respondent No.4 at serial No.1 therein. In this final seniority list the date of appointment of respondent No.4 on the post of Planning Assistant in AUDA was given to be 6th November, 1978, and accordingly she was placed senior to the petitioners. Representation of respondent No.4 was decided in her favour vide order dated 10th May, 1984 and her appointment on the post of Planning Assistant in AUDA was taken to be from 6-11-1978, i.e. her date of initial appointment on the post in the Town Planning and Valuation Department of the State Government. Respondent No.4 has been given further promotion on the basis of the erroneous seniority on the post of Planning Assistant, under order dated 15th

June, 1984. Not only this, she has been selected for the post graduate studies on the basis of the said seniority. Hence this special civil application.

4. Learned counsel for the petitioners has raised many grounds in support of the case of the petitioners. But I do not consider it necessary to advert to all the grounds, as this writ petition deserves to be accepted only on the ground that the order dated 9th October, 1978 has been passed by the respondent -AUDA without giving notice or opportunity of hearing to the petitioners.

5. The facts which are not in dispute are that respondent No.4 was appointed on the post of Planning Assistant, but her appointment was made in the Town Planning and Valuation Department of the Government of Gujarat. AUDA is a statutory, autonomous body other than Government Departments. Petitioners were appointed on the post of Planning Assistant in AUDA, i.e. an autonomous, statutory body, which is not a Government Department. Services of employees of AUDA and those of State Government Departments are not interchangeable or transferable. Seniority of the employees and officers, may be of the same category or of the same pay-scale, are to be maintained separately. Promotions are also being provided and restricted - in one case under AUDA and in another case in the State Government Department. It is also not in dispute that respondent No.4 had resigned from the service of the Town Planning and Valuation Department of the State Government, and she was selected and appointed on the post of Planning Assistant in AUDA, which appointment was given on probation. The petitioners contend that it was a case of fresh appointment, and in the provisional seniority list respondent No.4 was shown as junior to the petitioners. However, as a result of the order dated 10th May, 1984 her appointment was treated to be effective from 9-10-1978 on the post of Planning Assistant in AUDA. It is not in dispute that the order annexure-J dated 10th May, 1984 has been made in favour of respondent No.4 without giving notice or opportunity of hearing to the petitioners. The petitioners are prejudicially affected by the said order. They have been rendered junior to respondent No.4. Seniority is a valuable civil right. If any order, may be administrative, adversely affects the civil right of the employees or officers of AUDA, then before making such order principles of natural justice have to be followed, which precisely has not been done in the present case. This petition deserves to be accepted on the ground of violation of the principles of natural justice in passing order dated 10th May, 1984.

Therefore, I do not consider it proper to deal with the other contentions raised by the counsel for the petitioners on merits of the matter.

6. In the result this special civil application succeeds and the order dated 10th May, 1984 at annexure-J as well as the seniority list dated 31st May, 1984 at annexure-I are quashed and set aside to the extent they relate to the petitioners and respondent No.4. However, quashing of the aforesaid order and seniority list will not affect the promotion of respondent No.4, given to her on the post of Assistant Town Planner, and this promotion of respondent No.4 will be treated as adhoc and officiating promotion till the matter of seniority inter se the petitioners and respondent No.4 is decided afresh, after giving notice and opportunity of hearing to the petitioners. In case the petitioners are ultimately found to be senior to respondent No.4, then they shall be entitled to all consequential benefits flowing therefrom. Rule made absolute in the aforesaid terms. No order as to costs.

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